

Message Text

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PAGE 01 STATE 236797

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EB/BP-MR. SCHLENKER

EB-MR. KATZ

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O 240041Z SEP 76

FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA IMMEDIATE

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E.O. 11652:N/A

TAGS: EINV, ETRD, CA

SUBJECT: CANADIAN NOTE ON POTASH ANTI-TRUST CASE

1. CANADIAN DCM MCKINNEY CALLED ON ASSISTANT SECRETARY KATZ SEPTEMBER 22 AND LEFT THE FOLLOWING DIPLOMATIC NOTE ON THE POTASH ANTI-TRUST CASE.

2. BEGIN TEXT--

THE EMBASSY OF CANADA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOUR TO REFER TO THE INVESTIGATION UNDERWAY BY THE UNITED STATES ANTI-TRUST AUTHORITIES INTO ALLEGED ACTIVITIES OF CERTAIN COMPANIES
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PAGE 02 STATE 236797

IN THE POTASH INDUSTRY.

THE UNITED STATES GOVERNMENT WILL BE AWARE THAT THE CANADIAN GOVERNMENT PLACES A HIGH VALUE ON THE COOPERATIVE APPROACH WHICH HAS CHARACTERIZED OUR RELATIONS IN THE ANTI-TRUST FIELD SINCE THE INITIATION OF THE FULTON-ROGERS AND BASFORD-MITCHELL ARRANGEMENTS OF 1959 AND 1969 RESPECTIVELY. IN THIS REGARD THE GOVERNMENT WISHES TO ASSURE THE UNITED STATES GOVERNMENT OF ITS DESIRE TO CONTINUE THIS COOPERATION WHICH HAS WORKED TO OUR MUTUAL ADVANTAGE.

THE CANADIAN GOVERNMENT, HOWEVER, IS CONCERNED ABOUT OFFICIALS OF THE UNITED STATES JUSTICE DEPARTMENT IN THE COURSE OF GATHERING EVIDENCE FOR A PROSECUTION ARISING FROM ALLEGED VIOLATIONS OF UNITED STATES ANTI-TRUST LAWS, APPROACHING PAST OR PRESENT CANADIAN OFFICIALS FOR INTERVIEWS IN RESPECT OF INFORMATION WHICH THEY MAY HAVE ACQUIRED IN THE COURSE OF THEIR OFFICIAL DUTIES. WE UNDERSTAND THAT THERE IS A POSSIBILITY THAT THE STATE OF ILLINOIS MAY WISH TO TAKE SIMILAR ACTION INVOLVING CANADIAN OFFICIALS IN WHICH CASE THE SAME CONCERNS WOULD APPLY.

ACCORDINGLY, THE CANADIAN GOVERNMENT, NOTING THAT OFFICIALS ARE NOT OBLIGED TO GRANT SUCH INTERVIEWS, WILL NOT ENCOURAGE THEM TO DO SO, NOR DOES THE GOVERNMENT INTEND TO AUTHORIZE PRESENT OR FORMER OFFICIALS TO DISCLOSE INFORMATION RELATIVE TO THEIR OFFICIAL DUTIES. WITH RESPECT TO FEDERALLY-APPOINTED JUDGES, THE CANADIAN GOVERNMENT IS OPPOSED, AS A MATTER OF POLICY, TO THE INVOLVEMENT OF THE JUDICIARY IN ANY CONTROVERSIAL MATTER OF THIS KIND.

SIMILARLY, THE UNITED STATES GOVERNMENT SHOULD BE AWARE THAT THE GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN HAS TAKEN THE POSITION THAT IT IS NOT PREPARED TO GIVE ITS APPROVAL TO ANY FURTHER INTERVIEWS WITH PRESENT MINISTERS OF THAT GOVERNMENT, NOR WITH PAST OR PRESENT OFFICIALS, AND HAS SO ADVISED THE PERSONS CONCERNED.

THE PRINCIPLE WILL BE APPRECIATED BY WHICH THE CANADIAN LIMITED OFFICIAL USE

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PAGE 03 STATE 236797

GOVERNMENT IS NOT NORMALLY PREPARED TO HAVE OFFICIALS DISCLOSE IN CONNECTION WITH LEGAL PROCEEDINGS IN A FOREIGN JURISDICTION, INFORMATION ACQUIRED BY THEM IN THE COURSE OF THEIR OFFICIAL DUTIES. OF COURSE, THE CANADIAN GOVERNMENT, IN THE INTERESTS OF FURTHERING COOPERATION WITH THE UNITED STATES ON ANTI-TRUST MATTERS, WOULD BE PREPARED TO CONSIDER REQUESTS FOR INFORMATION RELATIVE TO THIS CASE, SHOULD THE UNITED STATES DEPARTMENT OF JUSTICE WISH TO

PRESENT THEM. IN THIS MANNER, THE CANADIAN GOVERNMENT WISHES TO DIFFERENTIATE CLEARLY BETWEEN CONTACTS WITH INDIVIDUAL OFFICIALS AND GOVERNMENT-TO-GOVERNMENT CONTACTS THEMSELVES.

THE CANADIAN GOVERNMENT HAS TAKEN NOTE OF PROPOSED SPECIAL ARRANGEMENTS FOR NOTIFICATION AND CONSULTATION IN THE POTASH CASE.

THE SUGGESTED PROCEDURES IN THE FIRST INSTANCE CAUSE CONSIDERABLE DIFFICULTY TO THE CANADIAN GOVERNMENT IN THAT NO

DISTINCTION IS MADE BETWEEN PUBLIC OFFICIALS AND PRIVATE CITIZENS. THE CANADIAN GOVERNMENT APPRECIATES THE SUGGESTION, HOWEVER, THAT IT WOULD BE INFORMED IMMEDIATELY OF THE NAMES OF CANADIAN NATIONALS INVOLVED IN ADVANCE OF THE ISSUANCE OF ANY SUBPOENAS OR THE INSTITUTION OF ANY WATCH LIST AT THE BORDER.

WITH REGARD TO THE CONDITION SUGGESTED THAT ANY INFORMATION MADE AVAILABLE IS FOR THE USE OF THE CANADIAN FEDERAL GOVERNMENT AND WILL BE TREATED AS CONFIDENTIAL, THE CANADIAN GOVERNMENT IS NOT IN A POSITION TO AGREE. IT WILL BE APPRECIATED THAT GIVEN THE ALLEGED INVOLVEMENT OF OFFICIALS AND MINISTERS OF THE GOVERNMENT OF SASKATCHEWAN IT IS THE RESPONSIBILITY OF THE FEDERAL GOVERNMENT TO KEEP THE PROVINCIAL GOVERNMENT FULLY INFORMED OF DEVELOPMENTS IN THIS CASE. IN ADDITION, THE CANADIAN GOVERNMENT WOULD FEEL CONSTRAINED TO ADVISE ANY OF ITS PAST OR PRESENT OFFICIALS SHOULD INFORMATION COME TO ITS ATTENTION THAT UNITED STATES ANTI-TRUST AUTHORITIES INTENDED TO REQUEST AN INTERVIEW WITH THEM. IN THIS REGARD, THE GOVERNMENT OF CANADA DOES NOT CONSIDER THAT THE SUGGESTED LIMITED OFFICIAL USE

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PAGE 04 STATE 236797

TWENTY-FOUR HOUR ADVANCE NOTICE CONSTITUTES A "REASONABLE TIME PERIOD".

THE CANADIAN GOVERNMENT IS WILLING TO CONSIDER ANY SUGGESTIONS WHICH MIGHT BE FORTHCOMING FROM THE DEPARTMENT OF STATE REGARDING THE INVOLVEMENT IN THE POTASH CASE OF ANY PAST OR PRESENT OFFICIALS OR MINISTERS OF A FEDERAL OR PROVINCIAL GOVERNMENT. IN ADDITION, THE CANADIAN GOVERNMENT WISHES TO COME TO AN EARLY AGREEMENT ON PROCEDURES TO BE FOLLOWED BY THE RELEVANT AUTHORITIES IN THIS CASE.

THE EMBASSY OF CANADA AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE DEPARTMENT OF STATE THE ASSURANCES OF ITS HIGHEST CONSIDERATION.--END TEXT.

3. DETAILS OF MCKINNEY/KATZ DISCUSSION FOLLOW SEPTTEL. ROBINSON

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